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## **Thought and Advocacy About Student Debt: Representation of Low-Income Borrowers in Law School Clinical Programs**

Ann Shalleck\*

The legal academy, through clinical legal education, has the potential to make a distinctive contribution to thought and advocacy about student debt. Clinical education can further, in immediate and powerful ways, the classic research, teaching, and service missions of legal education by addressing the problems posed by student debt for society and individuals. Clinical education is a site to explore how law and the legal system are basic to financing higher education through student debt; understand the operation of that system in the lives of individual borrowers; recognize the consequences of legal and policy choices for individuals and society; and identify ways that student debt affects people situated differently by income, race, and gender. Clinical education also affords opportunities to discern patterns contributing to inequality and injustice. In this distinctive setting within legal education, clinical programs can create opportunities for lawyers to learn to challenge inequality in access to higher education, both by representing individuals harmed in the process of taking on student debt and designing projects that seek to change the conditions that debt creates for this group. In the development of clinical education for more than forty years, law schools have built the capacity to contribute to understanding, in the context of practice, the legal components of important social problems, and also to create advocacy strategies for addressing these problems. Thus, through their clinical programs, law schools can become active participants in addressing the problematic role of student debt in securing access to higher education for the most vulnerable.

Clinical education seeks to equip future lawyers to represent clients effectively and combat injustice. Clinical educators have constructed an educational model that deploys faculty-supervised legal practice by law students as a site for deepening understanding of how legal regimes operate in the lives of the people affected by them and showing how lawyers, through creative legal work, can reshape the contours of the legal system by helping individual clients who encounter or are harmed by injustice within that system.

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Thus, by representing clients with student debt problems, clinical programs can build knowledge about how debt affects the lives of low-income student borrowers and also enrich analysis of—and advance challenges to—how legal frameworks and legal institutions shape the operation of student educational debt within our economy and society, particularly for poor students.

While the legal academy could take on these responsibilities and opportunities in many ways, I address here only the possibilities for law school clinical programs to help low-income student borrowers during the current intense and often disruptive transformation of higher education, while also addressing the critical social and economic problem of student debt. High quality, well-designed clinical programs in which students represent low-income borrowers under the supervision of full-time faculty can help this particularly vulnerable group avoid or mitigate the appalling consequences that they often encounter as they attempt to improve their lives by obtaining a degree. With knowledge developed through law student representation, clinical educators can design, implement, and disseminate model programs that can expand legal representation for poor borrowers and decrease the risks this group faces in securing the enormous benefits of higher education. At the same time, clinical programs can generate insight into how legal regimes work in practice for this population of students and can gather and interpret otherwise inaccessible information. This understanding can help craft policies and strategies that effectively address the hurdles that low-income student borrowers encounter.

I offer four entry points for analyzing how clinical programs can reveal ways the law affects poor students' ability to acquire higher education and generate legal strategies to help poor students when they contend with problems. I discuss the crisis of civil legal services that limits representation for low-income borrowers; the role of legal education in educating lawyers and providing legal services; the identification of socio-legal problems burdening low-income borrowers; and the multiple frameworks for addressing the legal issues that poor student borrowers face. I present each entry point only as a beginning for thinking about the concerns that borrowing by low-income people to go to college raise for society and for our legal system, not as an analysis of the complex dynamics at work in the areas that I suggest. This Article is an invitation to begin work with possible directions in mind. It is rooted in the conviction that legal thought and practice, as expressed in the norms and methods elaborated in the design of clinical education, can contribute to providing much-needed legal help to low-income students and to building knowledge, crafting legal strategies, and shaping policies that challenge inequality and foster broad access to higher education.

## I. THE CRISIS OF CIVIL LEGAL SERVICES: LIMITATIONS ON ADVOCACY FOR POOR PEOPLE FACING CATASTROPHIC LOSS

Many have written about the long-term crisis of inadequate civil legal services for poor people and poor communities, suggesting different strategies for providing legal help and developing projects that address particular problems. I do not review that extensive literature here.<sup>1</sup>

However, this situation presents an important background to analyzing the potential role that legal education, through its clinical programs, may play in addressing the immediate needs of low-income student borrowers facing draconian consequences for failure to repay student loans. Limited and truncated legal services for poor people, who face both dire, immediate consequences and pervasive, deeply-entrenched systemic problems, are chronic in our legal system.<sup>2</sup> For low-income student borrowers who are struggling

1. See ALAN W. HOUSEMAN & LINDA E. PERLE, CTR. FOR LAW & SOC. POLICY, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES (2007), available at <http://www.clasp.org/resources-and-publications/files/0158.pdf>, archived at <http://perma.cc/AL2H-MS3J> (summarizing history of legal assistance programs). Houseman and Perle describe the development of civil legal aid in the United States beginning with the services that existed prior to 1960 and the early involvement of the American Bar Association. See *id.* at 3-4. They explain the role of the Economic Opportunity Act in expanding civil legal services through creating the Office of Economic Opportunity (OEO), which administered the government's anti-poverty initiatives. See *id.* at 7; see also Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508 (codified as amended in scattered sections of 42 U.S.C.). Houseman and Perle note that, with the enactment of this legislation, "[f]or the first time, Congress made federal money available for legal services for the poor." HOUSEMAN & PERLE, *supra*, at 7. The piece also details opposition to publicly-funded legal services, as well as program accomplishments in the face of that opposition and the programs' struggle for growth. See *id.* at 10-14. Since the 1980's, these programs have faced economic and political constraints in their practice on behalf of poor people. See Alan W. Houseman, *The Future of Civil Legal Aid: A National Perspective*, 10 UDC/DCSL L. REV. 35, 38 (2007). In addition to publicly-funded civil legal aid programs, public interest law organizations have addressed particular socio-legal issues, many of which are particularly salient for people living in poverty. See, e.g., ALAN K. CHEN & SCOTT L. CUMMINGS, PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE 41-92 (2013) (discussing development of American public interest lawyering); COUNCIL FOR PUB. INTEREST LAW, BALANCING THE SCALES OF JUSTICE: FINANCING PUBLIC INTEREST LAW IN AMERICA 17-69, 100-31 (1976); JOEL F. HANDLER ET AL., LAWYERS AND THE PURSUIT OF LEGAL RIGHTS 17-47 (1978); STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING (2004). Scott Cummings and others have focused on the development of sites within the private sector for the provision of public interest lawyering. See, e.g., JULIET M. BRODIE ET AL., POVERTY LAW, POLICY, AND PRACTICE 587-650 (2014) (providing overview of private sector public interest involvement); PRIVATE LAWYERS AND THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION 251-63 (Robert Granfield & Lynn Mather eds., 2009); Scott L. Cummings, *Privatizing Public Interest Law*, 25 GEO. J. LEGAL ETHICS 1, 1-2 (2012) (discussing tax exemption available to nongovernmental organizations providing public interest representation).

2. See MÉLANCA CLARK & MAGGIE BARRON, BRENNAN CTR. FOR JUSTICE, FORECLOSURES: A CRISIS IN LEGAL REPRESENTATION 12-14 (2009), available at <http://www.brennancenter.org/publication/foreclosures-crisis-is-legal-representation>, archived at <http://perma.cc/TSX7-CJRQ>. The scarcity of lawyers for a people facing immediate calamitous problems while caught in massive, systemic crises has been particularly apparent in the foreclosure crisis. See *id.* Although homeowners facing foreclosure acutely needed civil legal services to raise defenses to foreclosure and to otherwise assert defenses to actions against loss of their homes, few were available. See *id.* Clark and Barron explain how programs that would provide such services are poorly funded and can provide only limited legal services. See *id.*; see also ALAN HOUSEMAN, CTR. FOR AM. PROGRESS, THE

with their immediate problems or want to alleviate recurring abuses, the dearth of legal resources leaves them no place to look for legal help.<sup>3</sup> For most people—including the poorest—financing higher education individually through debt is now an almost inevitable component of getting a college degree in the United States.<sup>4</sup> Under current legal regimes, however, debt exposes the most vulnerable to enormous and potentially devastating risk.<sup>5</sup> Virtually no legal resources are available to individuals to challenge predatory or otherwise illegal practices particularly prevalent when individuals have few resources. Similarly, there are insufficient resources to help low-income students avoid or relieve the worst consequences when problems do arise.

Due to severe funding shortages, few legal services—whether offered pro bono as part of for-profit entities, or within non-profit organizations funded publicly, such as through the Legal Services Corporation, or through private philanthropy—represent low-income student borrowers, except on an erratic basis.<sup>6</sup> Many legal service providers offer only limited representation. Therefore, legal service programs are not in a position to offer much assistance to low-income students with educational debt. Some volunteer pro bono

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JUSTICE GAP: CIVIL LEGAL ASSISTANCE TODAY AND TOMORROW 6-7 (2011), available at <http://cdn.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/justice.pdf>, archived at <http://perma.cc/WTH6-FZTJ> (discussing history of cutbacks to legal aid services).

3. See DEANNE LOONIN & JILLIAN McLAUGHLIN, NAT'L CONSUMER LAW CTR., SEARCHING FOR RELIEF: DESPERATE BORROWERS AND THE GROWING STUDENT LOAN "DEBT RELIEF" INDUSTRY 19 (2013), available at <http://www.studentloanborrowerassistance.org/wp-content/uploads/File/searching-for-relief-report.pdf>, archived at <http://perma.cc/XT77-9RXE>. Loonin and McLaughlin describe the limited legal resources for low-income borrowers, and specifically address the problems with loan consolidation and the widespread use of arbitration clauses, which require consumers without assistance of counsel to waive their right to use the court system. See *id.* at 4; see also DEANNE LOONIN & GEOFF WALSH, STUDENT LOAN LAW § 1.12 (Nat'l Consumer Law Ctr. ed., 4th ed. 2010 & Supp. 2013) (describing nonlegal assistance like Ombudsman programs within agencies or NCLC's Student Loan Borrower's Assistance Project).

4. See LOONIN & WALSH, *supra* note 3, § 1.4.

5. See Jonathan Glater, *Student Debt and Higher Education Risk*, 103 CALIF. L. REV. (forthcoming 2015); Karen Herzog, *Working Your Way Through College Doesn't Add Up for Today's Students*, MILWAUKEE-WIS. J. SENTINEL (June 1, 2013), available at <http://www.jsonline.com/news/education/working-your-way-through-college-doesnt-add-up-for-todays-students-b9922857z1-209807931.html>, archived at <http://perma.cc/369B-YUZZ> (describing constraints faced by low-income students in accessing higher education). Herzog writes, "[w]orking one's way through a public university in four years with a minimum-wage summer job and part-time campus work study—with little to no family assistance or need-based financial aid—is an outdated ideal of previous generations." *Id.* She also discusses how unpaid internships to gain professional experience are not a realistic option for students working to finance their education. See *id.* See generally Brian K. Fitzgerald & Jennifer A. Delaney, *Educational Opportunity in America*, in CONDITION OF ACCESS: HIGHER EDUCATION FOR LOWER INCOME STUDENTS 3-24 (Donald E. Heller ed., 2002); Donald E. Heller, *State Aid and Student Access: The Changing Picture*, in CONDITION OF ACCESS: HIGHER EDUCATION FOR LOWER INCOME STUDENTS, *supra*, at 59-72; Jonathan D. Glater, *Debt, Equity and Risk* (unpublished thesis) (on file with author).

6. See BRENNAN CTR. FOR JUSTICE, LEFT OUT IN THE COLD: HOW CLIENTS ARE AFFECTED BY RESTRICTIONS ON THEIR LEGAL SERVICES LAWYERS 4 (2000), available at <http://www.brennancenter.org/publication/left-out-cold-how-clients-are-affected-restrictions-their-legal-services-lawyers>, archived at <http://perma.cc/P2SG-XFVQ>, [hereinafter LEFT OUT IN THE COLD] (explaining how 1996 cutbacks in legal services severely limited representation of low-income student borrowers).

programs that represent low-income borrowers exist, but they have little coordination or national presence. For example, in the Washington, DC metropolitan area, which is relatively rich in legal services for the poor, there is virtually no legal help available for poor individuals with student debt problems.<sup>7</sup> Specialized projects focused on providing client representation for problems with student debt are few. The National Consumer Law Center, one of the organizers of this symposium, is a rare exception.

Despite the dearth of legal services, low-income student borrowers have great legal needs. The National Consumer Law Center has produced outstanding materials providing guidance on how to handle many of the legal problems that low-income student borrowers face. It has also participated in extensive reform efforts to shape policy and to improve processes and procedures to benefit low-income student borrowers. Far-reaching legal advocacy, however, is essential nationally. Legal advocacy, for both individual clients confronting immediate problems and low-income student borrowers as a group, is critical for improving recurring difficulties and abuses.

The acute crises and long-lasting consequences experienced by individual low-income borrowers facing default often require the assistance of a lawyer. The particular legal landscape that any individual faces is usually complex both legally and factually. For example, in terms of the debts themselves, student loan programs are varied, complicated, and governed by multiple legislative and regulatory schemes.<sup>8</sup> The intricacies of multiple lenders or multiple kinds of loans can be difficult for a borrower to decipher, let alone navigate.<sup>9</sup> Gaining unified and straightforward information can itself be a daunting struggle.<sup>10</sup> Students frequently encounter poor or deceptive counseling prior to or at the point of loan origination and are shocked by the requirements attached to student loans and by the consequences of failing to meet payment obligations.<sup>11</sup> The practices of loan servicers and collection agencies often fail

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7. See Telephone Interview with Heather M. Latino, Supervising Attorney, Consumer Law Unit, Legal Aid Soc'y of D.C. (June 12, 2014).

8. See LOONIN & WALSH, *supra* note 3, §§ 1.4, 11 (discussing types of federal student assistance programs and private student loans).

9. See *id.*

10. See DEANNE LOONIN, NAT'L CONSUMER LAW CTR., NO LOST CAUSES: PRACTICAL IDEAS TO HELP LOW-INCOME STUDENTS SUCCEED IN COLLEGE 18 (2014), available at <http://www.studentloanborrowerassistance.org/wp-content/uploads/2014/03/report-no-lost-causes.pdf>, archived at <http://perma.cc/3WK9-4HHN>, [hereinafter LOONIN, LOST] (identifying student loan information and support services needed by low-income students).

11. See LOONIN & MCLAUGHLIN, *supra* note 3, at 15 (explaining deceptive information distributed to borrowers by loan companies); LOONIN & WALSH, *supra* note 3, § 1.12.4 (articulating potential problems associated with for-profit counselors); HEALEY C. WHITSETT & RORY O'SULLIVAN, NERA ECON. CONSULTING, LOST WITHOUT A MAP: A SURVEY ABOUT STUDENTS' EXPERIENCES NAVIGATING THE FINANCIAL AID PROCESS 1 (2012), available at [http://www.nera.com/content/dam/nera/publications/archive2/PUB\\_Student\\_Loan\\_Borrowers\\_1012.pdf](http://www.nera.com/content/dam/nera/publications/archive2/PUB_Student_Loan_Borrowers_1012.pdf), archived at <http://perma.cc/95WS-9VFU> (documenting students' surprise). Over two-thirds of respondents expressed some misunderstanding or surprise about their student loans, particularly

to comply with legal requirements.<sup>12</sup> Educational institutions are often ignorant, incompetent, or worse in assisting students as they confront the educational demands they have assumed in understanding the relationship between these demands and the management of their student loans.<sup>13</sup> Student borrowers are differently situated and encounter differential treatment based on race or ethnicity.<sup>14</sup> In addition, student loan default creates consequences in students' lives that go far beyond the repayment of the debt itself. Further educational opportunities and job prospects can be severely curtailed.<sup>15</sup> Aid from essential social welfare programs can be reduced.<sup>16</sup>

The life situations of low-income student borrowers exacerbate the problems posed by the legal and regulatory regimes that govern their debt and the institutions involved in extending, servicing, and collecting the debt. These students often lack experience with or knowledge about how debt works, and many have family members in the same situation.<sup>17</sup> Parents are often not a

relating to repayment terms, monthly payments, and interest rates. See WHITSETT & O'SULLIVAN, *supra*.

12. See Andrew Martin, *Debt Collectors Cashing in on Student Loans*, N.Y. TIMES (Sept. 8, 2012), available at <http://www.nytimes.com/2012/09/09/business/once-a-student-now-dogged-by-collection-agencies.html>.

13. See LOONIN, LOST, *supra* note 10, at 13 (emphasizing financial aid administrators should listen closely to individual students when offering advice).

14. See Abbye Atkinson, *Race, Educational Loans, & Bankruptcy*, 16 MICH. J. RACE & L. 1, 3-4 (2010); LAWRENCE GLADIEUX & LAURA PERNA, THE NAT'L CTR. FOR PUB. POLICY AND HIGHER EDUC., BORROWERS WHO DROP OUT: A NEGLECTED ASPECT OF THE COLLEGE STUDENT LOAN TREND 14 (2005), available at <http://highereducation.org/reports/borrowing/borrowers.pdf>, archived at <http://perma.cc/7YXY-MFGK>. See generally Glater, *supra* note 5; Michael A. Olivas, *Paying for a Law Degree: Trends in Student Borrowing and the Ability To Repay Debt*, 49 J. LEGAL EDUC. 333 (1999); J. Fredericks Volkwein et al., *Factors Associated with Student Loan Default Among Different Racial and Ethnic Groups*, 69 J. HIGHER EDUC. 206 (1998); PAMELA BURDMAN, THE INST. FOR COLL. ACCESS AND SUCCESS, THE STUDENT DEBT DILEMMA: DEBT AVERSION AS A BARRIER TO COLLEGE ACCESS (2005), available at <http://projectonstudentdebt.org/files/pub/DebtDilemma.pdf>, archived at <http://perma.cc/HU3D-W4VL>; ALISA F. CUNNINGHAM & DEBORAH A. SANTIAGO, INST. FOR HIGHER EDUC. POLICY, STUDENT AVERSION TO BORROWING: WHO BORROWS AND WHO DOESN'T (2008), available at <http://www.usafunds.org/USAFunds%20ResourceLibrary/StudentAversiontoBorrowing.pdf> (last visited Apr. 29, 2015), archived at <http://perma.cc/A3C8-FPKQ>.

15. Jeffrey J. Williams, *Debt Education: Bad for the Young, Bad for America*, DISSENT MAG. (2006), available at <http://www.dissentmagazine.org/article/debt-education-bad-for-the-young-bad-for-america>, archived at <http://perma.cc/42EP-PM24>; GLADIEUX & PERNA, *supra* note 14, at 7 (describing impact on future opportunities).

16. See Nat'l Consumer Law Ctr., *Consequences of Default*, STUDENT LOAN BORROWER ASSISTANCE, <http://www.studentloanborrowerassistance.org/collections/federal-loans/consequences-of-default-federal/> (last visited Apr. 29, 2015), archived at <http://perma.cc/J3Q3-GEHE> (identifying common government collection tools as tax refund offsets, wage garnishment, and federal benefits offsets); LOONIN & WALSH, *supra* note 3, §§ 5.1, 8.3, 8.4 (discussing implications of defaults on federal loans, private loans, non-judicial garnishments, and seizure of benefits); see also AnnaMaria Andriotis, *How Student Loans Could Hit Your Social Security*, MARKET WATCH (Aug. 10, 2012), <http://www.marketwatch.com/story/how-student-loans-could-hit-your-social-security-2012-08-10> (detailing default's implications for social security benefits).

17. See April A. Wimberg, Notes, *Comparing the Education Bubble to the Housing Bubble: Will Universities Be Too Big To Fail?*, 51 U. LOUISVILLE L. REV. 177, 187 (2012) (noting most defaults among young low-income minorities).

resource with knowledge or experience.<sup>18</sup> Students often have difficulty navigating unfamiliar institutions, making it harder to gather accurate information or to understand and interpret the meaning of data.<sup>19</sup> The precarious economic situation of most borrowers means that they may be overwhelmed easily by economic strain from employment problems, medical crises, disabilities, or housing predicaments.<sup>20</sup> Low-income students frequently have multiple family responsibilities that can interfere with their education or with their capacity to repay loan obligations.<sup>21</sup> Illegal or questionable practices by loan servicers make obtaining relief difficult, and stress generated by the servicers and debt collectors heightens the difficulty of handling intersecting problems in an organized and effective way.<sup>22</sup>

Given this situation, the potential for abuse, misinformation, or mistake is great at many points in the loan process. Many problems have an embedded legal component. Students may have legal claims or may be in a position to obtain legal relief regarding some aspects of their student loans. Having counsel to identify and pursue these claims can be crucial to many students to address injustice, weather crises, and create more secure situations for

18. See COLL. BD. ADVOCACY & POLICY CTR., *CRACKING THE STUDENT AID CODE: PARENT AND STUDENT PERSPECTIVES ON PAYING FOR COLLEGE* 11 (2010), available at [http://advocacy.collegeboard.org/site/default/files/11b\\_3172\\_Cracking\\_Code\\_Update\\_WEB\\_110112.pdf](http://advocacy.collegeboard.org/site/default/files/11b_3172_Cracking_Code_Update_WEB_110112.pdf), archived at <http://perma.cc/X23W-FMUH>. Parents interviewed, particularly from low-income and less-educated families, reported that they had little knowledge about college prices and financial aid programs and had done little to prepare financially for their children's education. See *id.* Fewer than half were confident that they knew the cost to attend a public college in their home state. See *id.*

19. See LOONIN, LOST, *supra* note 10, at 20 (advocating for better information for students trying to interpret loan data); Tim King, *Beyond Student Aid: Helping Disadvantaged Students Attend College*, CHRON. OF HIGHER EDUC. (Oct. 21, 2013), available at <http://chronicle.com/article/Beyond-Student-Aid/142471/>, archived at <http://perma.cc/T34P-LMU2>.

20. See, e.g., Rohit Chopra, *Excessive Student Loan Debt Drains Economic Engine*, POLITICO (May 8, 2013), <http://www.politico.com/story/2013/05/excessive-student-loan-debt-drains-economic-engine-91083.html>, archived at <http://perma.cc/4M8T-MFFE>; Jason DeParle, *For Poor, Leap to College Often Ends in a Hard Fall*, N.Y. TIMES (Dec. 22, 2012), available at <http://www.nytimes.com/2012/12/23/education/poor-students-struggle-as-class-plays-a-greater-role-in-success.html>; King, *supra* note 19; BURDMAN, *supra* note 14, at 4-5; MARY NGUYEN, EDUC. SECTOR, *DEGREELESS IN DEBT: WHAT HAPPENS TO BORROWERS WHO DROP OUT* 6-7 (2012), available at [http://www.educationsector.org/sites/default/files/publications/DegreelessDebt\\_CYCT\\_RELEASE.pdf](http://www.educationsector.org/sites/default/files/publications/DegreelessDebt_CYCT_RELEASE.pdf), archived at <http://perma.cc/45DY-NRU5>.

21. See, e.g., DeParle, *supra* note 20; Volkwein et al., *supra* note 14, at 215 (analyzing differences in reasons different ethnic groups default); King, *supra* note 19.

22. See, e.g., Ann Carrns, *Consumer Watchdog to Monitor Student Loan Servicers*, N.Y. TIMES (Dec. 3, 2013), available at <http://www.nytimes.com/2013/12/03/your-money/student-loans/consumer-watchdog-to-monitor-student-loan-servicers.html>; Susan Dynarski, *Remember the Problems With Mortgage Defaults? They're Coming Back with Student Loans*, N.Y. TIMES (June 12, 2014), available at <http://www.nytimes.com/2014/06/13/upshot/student-loan-woes-echo-mortgage-crisis.html>; Jason Getz, *Stumbling Blocks in Reducing Balance on a Student Loan*, N.Y. TIMES (Oct. 16, 2013), available at <http://www.nytimes.com/2013/10/17/your-money/stumbling-blocks-in-reducing-balance-on-a-student-loan.html>; Martin, *supra* note 12; YOUNG INVINCIBLES, *BORROWER IN DISTRESS: A SURVEY ON THE IMPACT OF PRIVATE STUDENT LOAN DEBT* (2013), available at <http://younginvincibles.org/wp-content/uploads/2013/05/Borrower-in-Distress-5.8.13.pdf>, archived at <http://perma.cc/PAQ4-TT8S> (examining sacrifices student borrowers make to repay loans and distress in dealing with private loans).



themselves and their families.<sup>23</sup>

The situation facing low-income student borrowers may be familiar to those knowledgeable about the intersecting issues involving student debt. Many people across disciplines who analyze student debt—including those concerned about higher education access, consumer finance, economic policy, and income inequality and mobility—have addressed persistent problems within various organizational structures and in different academic and policy contexts. Obtaining legal representation for low-income students to deal in a coordinated way with the particular mixture of entrenched and intertwined issues confronted by each individual student is often not, however, at the forefront of efforts to tackle student debt problems, particularly for student borrowers facing the most severe difficulties. While legal remedies may be constrained, they exist and can be enormously important both in solving a particular problem and in making a set of related problems more manageable. Creative legal strategies developed by knowledgeable lawyers can expand the range and significance of relief for different aspects of student-debt-related problems.<sup>24</sup> To fashion helpful approaches and generate a related set of effective legal strategies, lawyers must be familiar with the actual workings of the many legal regimes implicated by any individual's problems. Recognizing and addressing the consequences (both legal and non-legal) that arise in resolving one predicament are indispensable for effectively resolving multi-pronged difficulties and actually improving an individual's life. The insights that result from achieving such individual resolutions offer valuable information and can generate innovative approaches to devising possible policy changes.<sup>25</sup>

Lawyers can be particularly adept at this work, which combines deploying legal knowledge with an understanding of how institutions operate, as they counsel clients about how multi-pronged strategies fit with the circumstances of clients' lives.<sup>26</sup> Lawyers for individual student borrowers have the capacity to use existing remedies strategically, even when such remedies are limited, and to decide when it is possible to challenge illegal practices. These judgment calls are often context-specific and require lawyers knowledgeable about the complexities of student debt problems. Even in cases where there may not be much room for straightforward legal action, lawyers can build nuanced knowledge of how the various educational and financial institutions function,

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23. See LOONIN & MCLAUGHLIN, *supra* note 3, at 18-22 (noting risks of pro se representation posed by complex systems).

24. See, e.g., LOONIN & MCLAUGHLIN, *supra* note 3, at 18-22; LOONIN & WALSH, *supra* note 3; DANIEL A. AUSTIN & SUSAN E. HAUSER, GRADUATING WITH DEBT: STUDENT LOANS UNDER THE BANKRUPTCY CODE 79-109 (Am. Bankr. Inst. ed., 2013); Daniel A. Austin, *The Indentured Generation: Bankruptcy and Student Loan Debt*, 53 SANTA CLARA L. REV. 329 (2013).

25. See Scott L. Cummings, *The Pursuit of Legal Rights—and Beyond*, 59 UCLA L. REV. 506, 523-25 (2012) (discussing “policy dimension” of public interest law).

26. See STEPHEN ELLMANN ET AL., LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING 72-76 (2009) (explaining attorney's connection to client may aid in representation).

particularly in relationship to the legal regimes that govern them. With this knowledge, rooted in practice, lawyers can identify where there is room for legal maneuvering and challenge within legal regimes. This understanding positions lawyers well to work with their clients in devising creative legal strategies for attacking recurring problems of student debt.<sup>27</sup> Until we have more than a handful of lawyers who are familiar with the legal needs of low-income student borrowers, we cannot know the possible legal actions that could benefit this group, thereby helping to maintain poor students' access to higher education. These sophisticated legal strategies are of particular importance in providing relief from the serious harm done to low-income students by for-profit institutions.<sup>28</sup>

Thus, securing lawyers for low-income borrowers should be a part of any strategy to help them, not just with their student debt but also with the consequences of that debt in terms of their ability to participate fully in society and achieve social and economic mobility.

## II. EDUCATING LAWYERS: REPRESENTING CLIENTS AND CHALLENGING INJUSTICE IN A STUDENT DEBT CLINIC

The justifications for providing civil legal services targeted to help low-income student borrowers to both address a pressing social problem and serve the particular legal needs of individuals in dire circumstances differ from the potential roles for legal education in addressing student debt.<sup>29</sup> Legal education can contribute in different but related ways: law schools can advance understanding of the legal components of a complex, multi-faceted social problem, particularly as it operates in practice, while educating and inspiring law students to fulfill a central obligation of the legal profession: "Contributing to the profession's fulfillment of its responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them."<sup>30</sup> Legal

27. See generally AUSTIN & HAUSER, *supra* note 24; ELLMANN ET AL., *supra* note 26.

28. See Cummings, *supra* note 25, at 523-25. This article provides an explanation of and justification for this sort of advocacy that combines the assertion of individual client rights with broader claims for change to achieve substantive social justice ends. See *id.*

29. See Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN. ST. INT'L L. REV. 421, 424 (2004). In the United States, legal education has not been seen as a source of legal services for the poor. In other parts of the world, notably Latin America, law schools have often performed this role, often because there are almost no publicly funded sources of legal assistance for those in need. See Steven E. Hendrix, *Restructuring Legal Education in Guatemala: A Model for Law School Reform in Latin America?*, 54 J. LEGAL EDUC. 597, 604 (2004) (describing legal education reforms in Guatemala). There are many reasons behind these different roles that I will not pursue here; I seek only to clarify that law schools in the United States have not been viewed as a substitute for (or even a complement to) publicly-funded or non-profit civil legal services.

30. AM. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM § 2.2 (1992), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2013\\_legal\\_education\\_and\\_professional\\_development\\_maccrate\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authcheckdam.pdf) [hereinafter MacCrate

education has embraced this role in various ways.<sup>31</sup> In the area of student debt, clinical education offers a prime site for teaching law students how to represent low-income student borrowers in addressing the complex problems they face, and for developing an understanding of, and evaluating solutions for, the problems this population faces. In this endeavor, a clinic fulfills multiple roles of legal education in the United States.

The introduction and subsequent vast growth of clinical legal education has enriched the understanding of legal education as a site for student learning about law, legal institutions, and lawyering.<sup>32</sup> Clinics of various sorts provide legal services to indigent clients as part of the educational programs of law schools.<sup>33</sup> State court rules governing the practice of law have recognized legal practice by law students in clinical programs as an exception to general rules of admission to practice (a situation not replicated in most other parts of the world). While discussion continues within clinical education about how to integrate the interrelated missions of client representation, legal change, and education, clinical educators endorse the fundamental view that faculty-supervised client-representation as a component of legal education does not substitute for the government's and society's role in providing legal services for the poor. Student representation of clients in clinical programs within law schools is understood as serving several important educational goals: educating students about lawyers' ethical obligations under rules of professional responsibility to ensure access to justice;<sup>34</sup> enabling students to undertake important legal work skillfully and critically;<sup>35</sup> inculcating practical judgment;<sup>36</sup> and engaging the legal academy in this broad educational mission.<sup>37</sup>

The roles that clinical programs may play in representing low-income

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Report]; see also WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 8 (The Carnegie Found. for the Advancement of Teaching ed., 2007) [hereinafter *Carnegie Report*].

31. See generally ASS'N OF AM. LAW SCH., *EQUAL JUSTICE PROJECT, PURSUING EQUAL JUSTICE: LAW SCHOOLS AND THE PROVISION OF LEGAL SERVICES* (AALS ed., 2002) [hereinafter *AALS EQUAL JUSTICE PROJECT*].

32. See Susan Bryant et al., *Learning Goals for Clinical Programs*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 16-19, 21-23 (Susan Bryant et al. eds., 2014).

33. See *Carnegie Report*, *supra* note 30, at 14, 120-22.

34. See LESTER BRICKMAN, *CLEPR AND CLINICAL EDUCATION: A REVIEW AND ANALYSIS IN CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING*, 56-83 (1973) (examining CLEPR's role in rise of clinical legal education; in formulating its goals, the Council emphasized importance of educating law students in professional responsibility); WILLIAM PINCUS, *CLINICAL EDUCATION FOR LAW STUDENTS*, 37-38 (1980) (stressing legal education and training should come with insights and perspective on professional responsibility and its relation to justice for all); REGINALD SMITH, *JUSTICE AND THE POOR*, 240-41 (1919) (discussing how legal aid clinic exercises profound effect on ethics, specifically student's conception of lawyer's duty).

35. See *MacCrate Report*, *supra* note 30, at 6.

36. See *Carnegie Report*, *supra* note 30, at 119-20.

37. See *id.* at 12-14, 33-34; *MacCrate Report*, *supra* note 30, at 233-60.

student borrowers facing problems with student debt do not arise from an obligation to provide such services, but rather from the opportunities that this representation offers. Legal education can contribute to understanding and addressing a pressing socio-legal issue in creative and effective ways,<sup>38</sup> and students can integrate into their professional identities a commitment to seeking justice within the effective and responsible practice of law.<sup>39</sup> I sketch briefly how a clinic focused on student debt can provide an outstanding resource for addressing the needs and problems of low-income student borrowers and why these clinics would offer excellent educational opportunities for law students. Within the clinical literature, these issues would be framed as questions of clinic design and pedagogy.<sup>40</sup>

### *A. Why a Clinic Would Serve Low-Income Student Borrowers Well*

Students in well-organized and well-run in-house clinical programs provide excellent client service. Law students operating under the careful supervision of faculty can provide legal services of the highest quality. Decades of clinical scholarship and practice have created sophisticated models for clinical programs that ensure high-quality representation while educating students on issues involving the operation and practice of law, as well as the theoretical and policy issues implicated by legal practice in a particular substantive area.<sup>41</sup> The principles and practices of clinical education could readily be brought to the organization and operation of a student debt clinic. I identify briefly how these models would shape the creation of a student debt clinic.

In addition to drawing on basic pedagogical principles and practices of clinical education, the faculty of a student debt clinic would follow several

38. See, e.g., Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & SOC. JUST. 231 (2012); Jane H. Aiken & Stephen Wizner, *Measuring Justice*, 2013 WIS. L. REV. 79 (2013); Sameer M. Ashar, *Fieldwork and the Political*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, *supra* note 32, at 288-95; Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles To Maximize Student Learning and Social Justice Impact*, 20 CLINICAL L. REV. 39, 40-42 (2013); Elizabeth B. Cooper, *The Case for Structured Rounds*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, *supra* note 32, at 151-52; Wallace J. Mlyniec, *Where To Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 515 (2012).

39. See Carnegie Report, *supra* note 30, at 126-61; Donna Lee, *Supervision Stories: Identifying and Engaging Professional Identity Issues*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, *supra* note 32, at 242-49.

40. See Juliet M. Brodie, *Reflections from the Middle Ground: Clinic Design in Context*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, *supra* note 32, at 296-307; Susan Bryant & Conrad Johnson, *Fieldwork: The Experience That Sparks the Learning*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, *supra* note 32, at 251-81.

41. See Jane H. Aiken & Ann Shalleck, *The Practice of Supervision*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, *supra* note 32, at 205-21; Ann Shalleck & Jane H. Aiken, *Supervision: A Conceptual Framework*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY*, *supra* note 32, at 169-203.

important steps. First, they would design a seminar in which students would learn frameworks for representing clients well, both in general and in the context of student loan cases. While the syllabus would draw from other clinic seminars, it would be tailored to the particular needs and likely legal claims of this client population.<sup>42</sup> Faculty would develop targeted educational materials that go beyond the excellent practice manuals of the National Consumer Law Center—which focus on the substantive law of student debt—to engage students in the entire project of representing clients experiencing legal distress or seeking systemic change.<sup>43</sup> These materials would be designed to enable law students to grasp the experiences of their clients; to integrate the law regarding student debt with an understanding of how the law takes on meaning in the world of practice; and to appreciate the complexity of representing clients effectively when using this law. These materials commonly include simulations, readings, class assignments, and classroom exercises.

Second, the faculty would develop protocols for identifying and tracking clients. Obtaining clients on a regular basis and ensuring their representation throughout the course of any case or project requires careful planning and attention.<sup>44</sup>

Third, the faculty would need to build partnerships with other organizations and regulatory bodies working on issues of student debt. These partnerships are important for identifying clients, structuring coordinated strategies for change, educating student borrowers about their rights, and integrating legal representation into other efforts underway to address student debt and help low-income student borrowers.<sup>45</sup>

In-house clinical programs are well situated to provide full-service representation for clients.<sup>46</sup> They can address diverse and intersecting client needs and multiple issues in a coordinated way. The dangers of piece-meal or routinize representation of student borrowers are virtually eliminated. Students learn how to interview and counsel clients about complex situations; acquire techniques for deploying different legal strategies; and utilize resources for extensive investigation. Students in clinical programs are also encouraged to

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42. See Susan Bryant & Elliott Milstein, *The Clinical Seminar: Choosing the Content and Methods for Teaching in the Seminar*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY, *supra* note 32, at 33-56; Susan Bryant & Elliott Milstein, *Planning and Teaching the Seminar Class*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY, *supra* note 32, at 57-80; DEBORAH EPSTEIN ET AL., TEACHING THE CLINIC SEMINAR (2014).

43. See, e.g., Mark Neal Aaronson, *Judgment-Based Lawyering: Structuring Seminar Time in a Non-Litigation Clinic*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY, *supra* note 32, at 81-90; Alicia Alvarez, *One Community Economic Development Clinic's Seminar and the Challenges in Connecting the Work of the Clinic to the Work of the Client*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY, *supra* note 32, at 99-106.

44. See Bryant & Johnson, *supra* note 40, at 270-72.

45. See *id.* at 267.

46. See *id.* at 272-73.

represent a client in diverse claims in different fora when multiple, coordinated legal strategies are appropriate. Thus, clients will benefit from a range of legal services that will help them manage their student debts as they confront the intersecting issues in their lives.

Clinics are also in a position to foster change by challenging damaging practices. For issues that can be handled by law students, clinics can take on these legal actions themselves; for those that require greater expertise, students can work up an issue to put it in a good posture for referral to lawyers and legal organizations capable of undertaking complex matters. To create an effective referral network, programs would educate non-profits and the private, pro bono bar about the importance of student debt issues. For example, clinics are likely to be able to provide representation regarding some abuses committed by for-profit institutions, but need to coordinate with other lawyers and communicate with regulators in devising challenges to the practices of these well-funded and aggressively-defended entities.

Through such advocacy, a clinic can establish best practices and create standard educational materials for addressing the mixture of issues that arise in the representation of low-income student borrowers.<sup>47</sup> These model practices and educational materials will complement the substantive law analysis of the manuals of the National Consumer Law Center. Together, these resources will make it easier for other clinical programs or legal services providers to undertake similar representation.

### *B. Why Student Debt Is a Good Focus for a Clinical Program*

Representing low-income student borrowers in the many legal problems they face presents valuable educational experiences. Of greatest importance, students can exercise responsibility,<sup>48</sup> engaging in many lawyering activities including interviewing, counseling, investigating facts, planning strategically, negotiating, making decisions, and constructing narratives as part of each advocacy activity about low-income students' experiences with educational debt. Students will encounter issues that potentially involve both administrative and court action. They will sometimes need to use cooperative strategies for solving problems and at other times to advocate vigorously. Students will have opportunities both to defend against harm and initiate actions to remedy injustice. They will learn to build trusting relationships with their clients and to understand the complex stories of how particular clients came to be in difficult circumstances. They will learn how to communicate those stories effectively to decision makers and other audiences. They will confront complex regulatory schemes and learn to navigate the institutions that

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47. See *id.* at 270-71.

48. See Bryant & Johnson, *supra* note 40, at 261-63; Shalleck & Aiken, *supra* note 41, at 170, 172-73.

implement them. They may engage in collaborative projects with community and advocacy organizations doing policy work. In short, these cases present excellent opportunities for students to learn lessons encompassing many of the goals of clinical education.<sup>49</sup>

Representation of low-income student borrowers presents important opportunities to merge learning about effective, high-quality lawyering and social justice. In analyzing how low-income students encounter debt problems when seeking higher education, clinics can be particularly attentive to how intersecting experiences related to factors such as economic inequality, race, gender, and disability generate vulnerability or create exclusion.<sup>50</sup> In a student debt clinic, law students would learn the backgrounds of their clients' problems, including the legal, social, political, and economic dynamics that contribute to the explosion of student debt. Clinics can also address questions about how student debt is related to the role of higher education in society; the changing financing of higher education; structural inequality; and the role of education within families. As to all of these issues, students will learn how legal regimes contribute to their clients' multifaceted problems yet can also be sources of solutions.

Students will experience abstract policy questions as having immediate meaning in the lives of their clients. Through their experience, law students can engage deeply with the effects of current lending systems that are now central to access to higher education.<sup>51</sup> Clinical experience also enables law students to use their textured, well-grounded knowledge to explore methods for addressing the problems these lending systems create, particularly for poor students. They can draw upon their experiences representing individual clients in devising creative solutions. Law students can experience how they, as lawyers, might play important roles in addressing the problems low-income students face when attempting to secure higher education by incurring debt.

Clinical programs highlight the importance of client-centered lawyering. Students are taught to understand legal problems from the client's perspective, allowing that understanding to inform their representation while they exercise professional judgment.<sup>52</sup> Student debt cases present an interesting opportunity for law students to form connections with their clients, while maintaining their focus upon the client's understanding of a situation. Many law students face student debt burdens, although their problems usually differ from those experienced by low-income borrowers attempting to get access to basic higher education. While most graduate students who borrow for a legal education face

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49. See generally TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY, *supra* note 32, at 13-31.

50. See *id.* at 17-19; see also Bryant & Johnson, *supra* note 40, at 267; Shalleck & Aiken, *supra* note 41, at 190-91.

51. See Shalleck & Aiken, *supra* note 41, at 183-84, 188-89.

52. See ELLMANN ET AL., *supra* note 26 at 72-108.

vastly different obstacles than low-income students attending college or technical schools, they all have debt and face economic insecurity. They all are seeking an education. They all are striving for opportunities to shape their lives in productive and meaningful ways. A clinic in which law students represent clients who are differently situated but face some similar issues can generate understanding about commonalities and differences.<sup>53</sup> Law students will encounter how vast economic and social changes affecting the financing of and access to higher education have differential impacts on the lives of people depending on how they are positioned in the world.

### III. ADVANCING UNDERSTANDING OF THE PROBLEMS OF LOW-INCOME STUDENT BORROWERS

Developing a focus on student debt within law school clinical programs can build broad understanding of how student debt operates in the lives of low-income students. A cadre of clinical professors and law students working on representing low-income individuals with student debt problems can increase knowledge about how and why problems emerge and develop in the ways that they do. Through representation of clients, they can map the difficulties of student debt from the perspective of poor students most vulnerable to troubles in many areas of their lives. They can also identify points at which strategic intervention could be particularly beneficial.

In the representation of individual poor students by law student attorneys working under the supervision of clinical faculty, clinical programs can accumulate, analyze, and disseminate knowledge about how family and community, as well as individual circumstances, affect clients' experiences. They can gather and decipher otherwise inaccessible information that often emerges through representation. This knowledge can be important in crafting policies and strategies to address effectively the barriers that their clients encounter. Compiling this information within and across clinical programs can contribute to work using other disciplinary methods to study the socio-legal experiences of poor students who assume debt. Through repeated representation of low-income student borrowers, clinical programs can help formulate effective legal routes to challenge the harmful consequences of student debt for education, society, and poor individuals. Clinics can devise legal advocacy to help those poor borrowers most harmed by the current legal regimes that shape how government, private institutions, and individuals address student debt problems. With time, resources, and expertise, clinics also can use accumulated insights to identify ways to improve the legal regimes within which student debt is nested.

At more sophisticated levels, legal advocacy for individuals can help reveal

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53. *See id.* at 18-71.



the patterns among recurring problems and the particular points within the progression of a problem at which student borrowers become vulnerable. In clinics, law students learn both to identify persistent patterns that run through individual advocacy and to appreciate the contextual nature of each individual client problem.<sup>54</sup> The individual stories of the circumstances that precede the onset of serious problems or that trigger cascading crises, when put together, can help advocates identify how systems interact and where particular hurdles expose people to grave danger. Identifying the critical moments at which poor students who borrow for their education encounter obstacles can be hard. Understanding how multiple factors intersect and lead to vulnerability can be complex. Recognizing the dynamics that contribute to student borrowers becoming overwhelmed and unable to extricate themselves from intersecting predicaments is important to making higher education a reality for those with few resources.

As law students work repeatedly with clients on the mixture of misfortunes and injustices afflicting students who get into trouble with debt, they acquire a granular understanding that is often not accessible in standard forms of research. While this fine-grained, deeply contextual knowledge does not substitute for data from other kinds of research, it often generates powerful insights into approaching the intersection of complex systems and their consequences in the lives of low-income students. Legal practice can also reveal points of exposure or fragility in the situations of low-income borrowers, including experiences that can undermine even the most carefully planned policy prescriptions. Thus, legal representation for individual borrowers would serve as an important mechanism for alleviating the many problems associated with the debt of low-income students and making regulatory and policy reforms effective.

Representation of individuals provides an important entry point for analyzing—from the perspective of low-income student borrowers themselves—the social forces and economic changes reshaping the financing of and access to higher education. Studies by outsiders can miss how problems that develop within families and communities facing many sources of stress and deprivation contribute to individual adversity. Representation of individuals in crisis provides a valuable mechanism for seeing from inside the sources of student debt problems and also identifying possible solutions that can elude even the most sympathetic policy-makers. Thus, legal education through its clinical programs can play a role in advancing understanding of how student debt affects low-income borrowers and how law and legal regimes contribute to the student debt problems faced by poor people. Clinical programs can also demonstrate how law and lawyers can be the source of help

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54. See Shalleck & Aiken, *supra* note 41, at 187-88. TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY, *supra* note 32, at 22.

for individuals and a resource for solving student debt problems. Through clinical education, the legal academy can be a resource for securing higher education for all who wish to pursue it, whatever their economic situation.

#### IV. CONCLUSION: FRAMEWORKS FOR UNDERSTANDING IMMEDIATE PROBLEMS

Law school clinical programs offer an important site for examining multiple frameworks for understanding the complex phenomenon of student debt. Student debt can be approached as an issue of consumer debt, access to education, economic mobility, or the nature of public responsibility for higher education, among other possibilities. Each framework implicates different social and political institutions and related legal regimes. Each framework prompts lawyers to think about different legal strategies and take different kinds of actions. Problems for low-income students are understood in different ways depending upon the framework used. Solutions get evaluated in different terms.<sup>55</sup>

If the mission of and justification for law school clinical programs is educational, it is important that students representing clients in student debt cases learn critical perspectives on law and the activities of lawyers in this area of practice. With faculty, they can explore in their own representation how different frameworks affect the experiences of their clients and their own thought and action as lawyers.<sup>56</sup> Clinics thus present an opportunity to use on-the-ground knowledge about student debt to expand critical perspectives on the changing methods for financing higher education and the consequences for access to higher education and the entrenchment of inequality. In designing a clinical program devoted to student debt, faculty can make these inquiries central to the educational mission.

Other Articles in this symposium address the issues posed by the frameworks policy-makers and researchers use in thinking about student debt. Lawyers in practice—whatever the setting—rarely have the luxury to think about the framework underlying the legal tools they are using to help their clients. Clinical education, however, has the responsibility to teach students to identify those frameworks and understand the consequences—intended and unintended—of using them. For example, clinical students might learn to pursue consumer law remedies to help their clients address problems with loan servicers or to use administrative law doctrines to seek out hardship exemptions from administrative sanctions for default on student debt. At the same time, however, prospective lawyers need to understand how the framework

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55. See Daniela Kraiem, *The Cost of Opportunity: Student Debt and Social Mobility*, 48 SUFFOLK U. L. REV. 689 (2015).

56. See generally TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY, *supra* note 32, at 22-23.

underlying each legal regime may be in tension with understanding access to education as part of essential state responsibility to all, regardless of income. While lawyers in practice might not have time or resources for this sort of inquiry, legal education, through its clinical programs, can foster insight about how legal thinking about securing higher education implicate not just individual development, but social mobility, the operation of law in a democracy, and the development of a just society. By examining multiple frameworks (and their consequences) for addressing the legal issues posed by low-income student debt,<sup>57</sup> a clinical program can make a critical contribution to scholarly inquiry about the role of law in shaping the relationship among educational debt, higher education, and society.

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57. See Bryant & Johnson, *supra* note 40, at 264-65.

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